TIME MATTERS:

AN INVESTIGATION INTO THE BC EMPLOYMENT AND ASSISTANCE RECONSIDERATION PROCESS

The Office of the Ombudsperson
B.C.'s Independent Voice For Fairness

Special Report No. 35 | JANUARY 2014
to the Legislative Assembly of British Columbia

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FROM THE OMBUDSPERSON

In 2009 it became clear from complaints received by our office that the Ministry of Housing and Social Development – now the Ministry of Social Development and Social Innovation – was not meeting the requirements in its own legislation that it complete reconsideration decisions within specified time limits. As a result some ministry clients permanently lost benefits they were entitled to receive, and would have received, had reconsideration decisions been made in time.

Our office began dealing with individual complaints and then started to look more deeply into the ministry's efforts to resolve this problem. We commenced an investigation into the ministry's delay in completing its reconsideration process. This report sets out the results of that investigation and examines the underlying causes of the delay and its impact on the ministry's clients.

This report identifies a number of decisions made by the ministry that affected its ability to conduct reconsiderations in the timeframe required as well as additional factors that influence the timeliness of reconsiderations on an ongoing basis. The findings and recommendations in this report focus on steps to remedy the problems identified and opportunities for the ministry to improve its processes to ensure future compliance and to fairly address the affect of delay on its clients.

I am pleased that the Ministry of Social Development and Social Innovation has accepted and agreed to implement the four recommendations in this report.

The ministry has agreed to accurately track reconsideration requests and compliance with statutory time limits based on the date the reconsideration request was submitted. Doing so will enable the ministry to respond in a timely manner to any lapses in meeting the time limits.

By changing the regulation to ensure that payment of benefits is effective no later than the due date of the reconsideration decision, the ministry has taken a significant step to ensure that people who were most in need will not lose assistance due to delay on the part of the ministry.

The ministry has agreed to compensate persons who experienced a quantifiable loss of benefits as a result of ministry delay.

The ministry has also agreed to review its adjudication process for Persons with Disabilities designation, an area where the rate of approval at reconsideration is higher than that of other reconsideration requests. More can be done at the initial application stage to ensure that clients, their families, advocates, and the medical professionals whose assessments and evidence are critical to the process, are fully informed and equipped to provide the information necessary for the first decision maker in the ministry to make the right decision at the earliest possible point in the process. By accepting our recommendation to review the initial application process, the ministry has acknowledged the benefit of process improvement for these clients.

The ministry's response to the four recommendations will have a positive impact for ministry clients. We will monitor the ministry's efforts to improve the Persons with Disabilities application process and look forward to reporting on improvements as they are implemented.

Kim J. Carter

Kim Carter
Ombudsperson
Province of British Columbia

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BACKGROUND

BC Employment and Assistance Programs

The Ministry of Social Development and Social Innovation administers a number of programs, broadly referred to as BC Employment and Assistance (BCEA) programs, to help low income and disadvantaged British Columbians. These programs include employment programs, income assistance, disability assistance, hardship assistance and various supplements including health supplements.

In this role, the ministry makes decisions that affect a person's ability to access basic necessities such as shelter, food, and health care. The people who access these programs include some of the most vulnerable members of our society. It is therefore essential that decisions are made in a timely fashion and that there is a fair process for reviewing and, where necessary, changing decisions.

The legislative framework for BCEA programs is provided by the *Employment and Assistance Act*, the *Employment and Assistance Regulation*, the *Employment and Assistance for Persons with Disabilities Act*, and the *Employment and Assistance for Persons with Disabilities Regulation*.[1] These acts and regulations establish a two stage review process and set out the types of decisions that may be reviewed and the procedures for requesting and conducting reviews. They include time limits for completing those reviews.

Reconsideration

Our investigation is concerned with systemic delays in the first stage of the ministry's decision review process, the *reconsideration* stage. Reconsideration provides an opportunity for a person to challenge a ministry decision that denies, reduces, or discontinues assistance. These decisions may affect the person's ability to pay for basic necessities such as rent, food, utilities or transportation, as well as their ability to meet specific medical needs for dietary supplements, assistive devices or medical supplies.

The reconsideration process permits the person asking for review of a decision to provide additional or new information to support their case. The reconsideration either upholds the initial decision or provides a new decision. It is the final level of review within the ministry.[2]

Government has recognized the importance of timeliness in providing support by ensuring the inclusion of a requirement that the ministry make reconsideration decisions within specified time limits. Those time limits are set in regulation and require the ministry to conclude the reconsideration within 10 business days from the date the reconsideration request is received by the ministry or, with the consent of the client, 20 business days.[3]

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1 *Employment and Assistance Act*, S.B.C. 2002, c.40; *Employment and Assistance for Persons with Disabilities Act*, S.B.C. 2002, c.41; *Employment and Assistance Regulation*, B.C. Reg. 263/2002; *Employment and Assistance for Persons with Disabilities Regulation*, B.C. Reg. 265/2002.

2 Ministry clients who are unsuccessful at reconsideration may request an appeal of the reconsideration to the independent Employment and Assistance Appeal Tribunal.

3 *Employment and Assistance Regulation*, B.C. Reg. 263/2002, s. 80; *Employment and Assistance for Persons with Disabilities Regulation*, B.C. Reg. 265/2002, s. 72.

Decisions eligible for reconsideration

The legislation establishes certain categories of ministry decisions that can be reconsidered. These are:

- decisions to refuse to provide income assistance, disability assistance, hardship assistance, or a supplement
- decisions to discontinue income assistance, disability assistance, or a supplement
- decisions to reduce income assistance, disability assistance, or a supplement
- decisions about the amount of a supplement and
- decisions about the conditions of an employment plan[4]

When ministry employees inform a person of a decision to discontinue, reduce or deny assistance or a supplement, the ministry is required to provide the reasons for the ministry's decision, tell the person that they have the right to request a reconsideration of the decision and explain the process for doing so.[5]

The reconsideration process

A ministry client who wants a decision to be reconsidered can advise the ministry office that made the decision verbally or in writing. A ministry employee will then enter information into the ministry's Integrated Case Management (ICM) system about the original decision and the reasons for it, the date of the decision, and any relevant sections of the legislation.[6] These steps generate a form called the Request for Reconsideration. The ministry completes its portion of the *Request for Reconsideration* by attaching copies of all information used to make the decision to the form. The entire reconsideration package is then given to the ministry client.

The regulations require that the person requesting reconsideration has 20 business days from the date they are notified of the ministry's decision to complete and deliver their signed Request for Reconsideration to the ministry by mail or in person.[7] The individual can submit additional information or documents with the completed Request for Reconsideration or at any time before the reconsideration decision is made.

After it receives the Request for Reconsideration, the ministry has 10 business days to make a reconsideration decision. This may be extended by an additional 10 business days when the ministry considers it necessary to clarify relevant information and the client consents. Extension requests may also be initiated by the client if they require additional time to provide information to support their request.[8]

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4 *Employment and Assistance Act*, [SBC 2002] c.40, s. 17(1); *Employment and Assistance for Persons with Disabilities Act*, [SBC 2002] c.41, s. 16(1).

5 In our Special Report No. 28, *Ombudsman Investigates Income Assistance Complaints* (March 2006), the Ministry agreed to provide direction to staff to ensure that clients were informed of their right to reconsideration and appeal, and were provided with the reconsideration and appeal brochure. Ministry policy was amended to include this direction.

6 Prior to February 15, 2013, this information was entered in the now-retired Reconsideration and Appeal System (RAS).

7 *Employment and Assistance Regulation*, B.C. Reg. 263/2002, s. 79(2); *Employment and Assistance for Persons with Disabilities Regulation*, B.C. Reg. 265/2002, s. 71(2).

8 Ministry of Social Development Online Resource, Reconsideration Procedures, Extension of Reconsideration Timeline: June 15, 2009.

If the reconsideration is about a decision to discontinue or reduce assistance that a person was already receiving, the client may request a reconsideration or appeal supplement to maintain their benefits while their request is being adjudicated.[9] In order to obtain this supplement, however, clients must agree to repay the supplements if they are not successful in the reconsideration and appeal process.

Reconsideration Branch

Since mid-2009, all ministry reconsideration decisions are made centrally in Victoria by the ministry's Reconsideration Branch.

Prior to 2009, reconsideration decisions were made in several locations throughout the province. A centralized Health Reconsideration Branch in Victoria, the predecessor of the current Reconsideration Branch, was responsible for reconsiderations of decisions made by the central Health Assistance Branch[10] as well as Persons with Persistent Multiple Barriers (PPMB) adjudications. Reconsiderations of most decisions made by ministry field offices were, however, conducted by Regional Reconsideration Adjudicators working within each of the ministry's regions.[11] In early 2009, the ministry decided to centralize all reconsideration decision-making by creating a single Reconsideration Branch in Victoria. According to the ministry, the centralization process began on March 30, 2009, and was completed by June 30, 2009.

[9] *Employment and Assistance Regulation*, B.C. Reg. 265/2002, s. 54; *Employment and Assistance for Persons with Disabilities Regulation*, B.C. Reg. 263/2002, s. 52.

[10] Decisions made by the Health Assistance Branch include the Person With Disabilities designation and most health supplements.

[11] The Ministry of Social Development and Social Innovation is split into five regions in the province: Vancouver Island, Vancouver Coastal, Fraser, Interior, and North. Regional offices are located in Victoria, Nanaimo, Vancouver, Surrey, Kamloops, and Prince George.

OUR INVESTIGATION

In the spring of 2009, the number of complaints we received related to delays in the ministry's reconsideration process began to increase. These complaints focused primarily on two areas:

1. The ministry was not meeting the legislated time limits to complete reconsideration decisions.

2. Ministry clients lost out on benefits as a result of the ministry's delays in completing reconsideration decisions.

In the course of investigating and resolving individual complaints we received, we also became concerned about how not only those who had complained to our office, but also others who had not, had been affected by the ministry's delays. As a result we asked the ministry what it was doing to address what appeared to be a larger problem. The ministry informed us that it was taking steps to address the problem, including:

- identifying urgent requests for reconsideration and dealing with them on a priority basis and
- hiring and training additional staff

From December 2009 through November 2010 we continued to review what actions the ministry was undertaking to respond to reconsideration delays and the effect of those actions. Over that period, the ministry assured us that they expected to clear existing backlogs in the near future so that its staff would be more able to complete reconsideration decisions within the legislated time limits. In spite of the ministry's confidence, it became increasingly evident that the ministry was not successfully eliminating backlogs and was continuing to fail to complete reconsiderations within the legislated time limits.

As a result, the Ombudsperson notified the Minister in May 2011 that she had initiated an investigation into the ministry's ongoing delays in completing reconsiderations and recurring failure to meet the legislated time limits.

Our investigation concluded that the ministry has not consistently fulfilled its statutory obligation to complete reconsideration decisions within the required time limits; that delay has adversely affected some ministry clients; and that the ministry does not have adequate processes in place to ensure that this situation will not recur.

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Investigative Process

Document review

Our investigation included an examination of the relevant provisions of the *Employment and Assistance Act* and *Regulation* and the *Employment and Assistance for Persons with Disabilities Act* and *Regulation*. We reviewed the ministry's caseload statistics and annual service plan reports from 2005 to 2013, its policies and procedures regarding reconsideration, and the publicly available information and publications about reconsideration on the ministry's website. We also obtained data related to reconsideration timelines, outcomes and subject matter, and documents and information related to planning, staffing, compliance, reporting and training.

Interviews and meetings

During the investigation, the Ombudsperson and staff met with senior ministry officials, including the deputy minister and the assistant deputy ministers of the Policy and Research Division and the Regional Services Division. Ombudsperson staff also met with other ministry staff on several occasions between 2011 and 2013.

File review

We accessed the ministry's computerized records systems and conducted reviews of reconsideration files.[12] We randomly selected and reviewed 181 reconsideration decisions. This number represented 5% of the total number of reconsideration decisions made in each of eight months: June, September and December 2009; March, June, September and December 2010; and March 2011.

Importance of compliance with reconsideration time limits

Impacts of reconsideration delay

People receiving assistance from the ministry may need support for a variety of reasons. Individuals who seek assistance from the ministry include people with disabilities, people who are temporarily out of work, single parents, people with low literacy skills, and individuals struggling with mental health, addictions, and other health issues. Many of these individuals are not able to support themselves through employment and may be completely reliant on the ministry's financial and supplemental assistance to meet their day-to-day needs.

The ministry serves a population that includes people who face significant financial and social challenges, and who are often marginalized due to extreme poverty or other circumstances. Delay presents a significant concern for an already vulnerable population who do not have the personal resources to sustain a basic quality of life without the additional supports of social assistance. Prior to requesting reconsideration, an individual has often already been through a lengthy administrative process that can involve multiple contacts with the ministry and other individuals or agencies to seek support. It is important that the ministry's reconsideration process not unnecessarily extend the time of an already lengthy and often complex procedure.

Delay in reconsideration results in specific financial consequences for ministry clients who are eventually successful at reconsideration or appeal.

Delay in reconsideration results in specific financial consequences for ministry clients who are eventually successful at reconsideration or appeal. When a reconsideration or appeal decision results in an approval of a person's request for additional funding, such as health supplements, the approval is in most cases effective as of the date of the reconsideration decision. When the approval is for designation as a Person with Disabilities (PWD) or Persons with Persistent Multiple Barriers to Employment (PPMB), the person does not become eligible for increased rates of assistance until the first day of the month after the reconsideration decision.[13] Delay in approval

[12] This consisted of the following systems: Management Information System (MIS), Client Transaction System (CTS) and Reconsideration and Appeals System (RAS). In November 2010, the ministry introduced a new Integrated Case Management System (ICM) which we accessed to review files from December 2010 and March 2011.

[13] *Employment and Assistance Regulation*, B.C. Reg. 263/2002, s. 26; *Employment and Assistance for Persons with Disabilities Regulation*, B.C. Reg. 265/2002, s. 23.

of the PWD or PPMB designations can also delay access to health supplements.[14] A decision that is made after the due date established by legislation can result in a benefit being denied for a period of time solely because of the ministry's delay beyond legislated time limits.

Reconsideration delay can also have a financial impact where a client is unsuccessful at reconsideration or appeal. If a client receives a repayable supplement during the reconsideration process, delay in the reconsideration decision results in a higher amount of debt to repay to the ministry if the client is unsuccessful. This can have an adverse effect on clients, as many individuals who receive income assistance are not in a position to effectively budget or plan for debt repayment. For those who remain on or return to assistance after an unsuccessful reconsideration or appeal, the result is a deduction from their monthly assistance. It is therefore equally important to avoid creating a situation in which people acquire additional debt because of ministry delays in the reconsideration decision-making process.

The following examples, taken from the sample of files we reviewed, illustrate some of the situations in which ministry clients may be adversely affected by reconsideration delays:

- A person requested a supply of Ensure – a dietary supplement available under the ministry's monthly nutritional supplement provisions. People are eligible for a monthly nutritional supplement only if they are on disability assistance and "have a severe medical condition causing a chronic, progressive deterioration of health with symptoms of wasting."[15] The supplement is intended to "prevent imminent danger to the person's life by providing essential, specified items to supplement regular nutritional needs."[16] In other words, the supplement is only provided to those people who have already been acknowledged as having significant health challenges.

  In this case, the person submitted a reconsideration package a week after the original request was denied. The ministry took 36 business days from receipt of the reconsideration request to make its decision, which determined that the person met the criteria and approved the person's request for Ensure.
- In another case we reviewed, a person waited 22 business days for approval of a reconsideration request for Ensure.
- We found a similar delay in the case of a Person with Disabilities who waited 35 business days for the ministry to make a reconsideration decision, at which point the client was determined to be eligible for a vitamin and mineral supplement under the monthly nutritional supplement program.

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Where a person is not able to meet medically confirmed nutritional needs without additional assistance from the ministry, reconsideration decision delays can have consequences for the health of the individual.

- In two cases, the ministry approved reconsideration requests for custom orthotics but delayed its decision beyond the legislated time limits. Custom orthotics are designed to alleviate pain and realign skeletal imbalances, which can mean the difference between being mobile and being homebound for some people. In one of the two cases, the approval decision was made 32 business days after the Reconsideration Branch received the request for reconsideration.

[14] Individuals who receive a PWD or PPMB designation are entitled to apply for health supplements that are not available to other ministry clients.

[15] Ministry of Social Development Online Resource, Monthly Nutritional Supplement (MNS) Overview: December 1, 2003; see also *Employment and Assistance for Persons with Disability Regulation*, B.C. Reg. 265/2002, s. 67.

[16] Ibid.

- In another case where a person requested funding for a partial denture, the request was approved on reconsideration 54 days after the ministry received the person's completed request for reconsideration. Missing teeth, a partial denture or a full denture can affect not only a person's nutritional and dental health, but may also negatively affect that person's psychological well-being.
- In two new applications for the Persons with Persistent Multiple Barriers to Employment (PPMB) status, the Reconsideration Branch delayed its decision that the individuals were eligible for the PPMB status. PPMB clients are eligible for more monthly support assistance than income assistance clients without that status. In one case, the delay resulted in the individual receiving increased assistance a month later than they should have. In the other, the delay resulted in increased assistance being issued two months later than it would have if the reconsideration decision had been made within the legislated time limits.

Legislative compliance

The timelines in the reconsideration process are not voluntary for either party. Both ministry clients and the ministry itself are bound by the mandatory language of the *Regulations* to make requests or decisions within a specified number of business days.

The *Regulations* provide for a significant consequence to ministry clients who do not comply with the 20 business day time limit for reconsideration: they lose the right to make the request. However, the *Regulations* do not provide any consequence for ministry non-compliance with the time limits for decision-making. The client, for example, does not automatically have their request approved upon expiry of the time limit.

The courts have recently confirmed that the language in the Regulations setting out the time limits for reconsideration decisions is considered imperative.[17] The ministry argued before the court that, given the absence of any consequence in legislation for the ministry's non-compliance, the time limits in the Regulation were "directory only" and not mandatory.[18] The court did not accept the ministry's interpretation, confirming that the absence of a specific consequence for non-compliance does not excuse the ministry from its obligation to comply. Legislative requirements are not mere guidelines. They set out legal rights and obligations that define the relationship between individuals and the state. Individuals are entitled to expect the state to comply with its responsibilities, and should not experience hardship as a result of the state failing to comply with the law.

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[17] *Lee v. Employment and Assistance Tribunal and Minister of Social Development*, 2013 BCSC 513, para. 73.

[18] *Lee v. Employment and Assistance Tribunal and Minister of Social Development*, 2013 BCSC 513, para. 72.

COMPLIANCE WITH RECONSIDERATION TIME LIMITS

Compliance 2008/09 through 2012/13

After commencing our investigation in May 2011 we requested the ministry's monthly data on its compliance with the time limits set out in the Regulations. The following table sets out the monthly compliance percentage from April 2008 through March 2013 by fiscal year.[19] These statistics show the percentage of reconsideration decisions made in each month that were completed within legislated time limits.

Table 1: Percent of reconsiderations completed within legislated time limits

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	YEAR AVG.
2008/09	89.0	94.8	91.3	92.2	91.0	97.8	89.0	88.1	87.1	96.7	97.5	95.7	92.7%
2009/10	93.9	93.9	72.8	5.3	22.5	38.4	8.4	6.2	7.5	8.0	20.7	21.3	29.5%
2010/11	8.8	5.0	13.2	15.8	25.0	14.3	17.0	31.7	2.5	9.2	8.7	14.5	14.6%
2011/12	23.7	12.5	67.8	82.9	48.4	72.0	68.1	59.8	62.5	56.7	88.2	89.7	63.5%
2012/13	87.7	83.7	84.8	92.8	79.0	77.8	86.6	90.3	85.3	87.9	96.8	94.7	86.6%

The ministry was clearly not able to complete reconsideration decisions within the time limits in the vast majority of cases between July 2009 and May 2012.

The ministry was clearly not able to complete reconsideration decisions within the time limits in the vast majority of cases between July 2009 and May 2012.

The table above shows that from April 2008 through May 2009, the ministry reported a consistently high, if imperfect, level of compliance with the time limits for reconsideration. The monthly rate of compliance with the legislated time limits then fell dramatically from 93.9% in May 2009 to 5.3% in July 2009. This drop in compliance occurred in close proximity to the ministry's centralization of its reconsideration process, as well as a significant increase in ministry caseload and reconsideration request volume. Our investigation has considered the extent to which these and other factors may have affected the ministry's ability to meet its legislated time limits.

The ministry's compliance statistics make it difficult to pinpoint when delay began because the data used by the ministry, and therefore in this report, associate a reconsideration decision with the month in which it was completed – not the month in which it was requested. A number of the reconsideration decisions completed beyond legislated time limits in June and July 2009 would likely have been due in the month or two prior to the decision. As a result the statistics do not support a conclusion that delay did not emerge as a significant issue before June and July of 2009, but rather suggest that a significant problem was emerging earlier.

[19] A fiscal year runs from April 1 to March 31 of the following year, e.g. fiscal year 2009/10 runs from April 1, 2009 to March 31, 2010. Any references to years in this format in the report refer to fiscal years.

The data provided by the ministry unfortunately does not allow for the conclusive identification of the month in which delay became a significant issue. The data also does not indicate clearly the average severity of delay – how long beyond legislated time limits reconsideration decisions were being made at any time. It is reasonable, however, to conclude that the issue was developing by May of 2009.

There was a slight improvement in the number of reconsiderations completed within the legislated time limits in August and September of 2009, indicating that the ministry was beginning to address the issue. However, that number fell dramatically again in October 2009.

From December 2009 through November 2010, the ministry reported that they were taking steps to eliminate the existing backlog of reconsideration requests and delays in completing reconsideration decisions. Nevertheless, the ministry's rate of compliance with the legislated time limits continued to fluctuate considerably through fiscal years 2010/11 and 2011/12. At its low point in December 2010, the ministry completed only 2.5% of reconsideration decisions within the legislated time limits.

In consultation with our staff in July 2011 the ministry reported an improvement in its rate of compliance for completing reconsideration decisions within the legislated time limits. The data does show some improvements in June 2011 when 67.8% of reconsideration decisions were completed within the legislated time limits, further increasing to 82.9% in July 2011.

These improvements, however, were again temporary. In August 2011 the ministry only completed 48.4% of reconsiderations within the legislated time limits, and the ministry did not reach a compliance rate above 80% again until February 2012.

Since February 2012, the ministry has maintained a comparatively high rate of compliance, nearly comparable to the levels reached in 2008/09. Our review of the ministry's weekly compliance statistics from March 24 through July 6, 2013, indicated a compliance rate of 96.43%. While the ministry's recent performance shows an encouraging trend, given past trends it is not clear whether the ministry will be able to consistently comply with its statutory requirements over the longer term.

Causes of delay

Through our investigation we identified a number of factors that contributed to the inability of the Reconsideration Branch to comply with its legislated time limits. We also asked the ministry itself to identify to us any factors that they considered as having contributed to the delays.

The major factors identified by the ministry were limited staff resources in conjunction with caseload increases. There had been a significant increase in the number of new applications for the Persons with Disabilities designation from 2009 to 2011, which the ministry told us they believed was related to the economic recession that began in 2008. The ministry provided information indicating that staff levels did not keep pace with the rise in caseloads. Government fiscal restraints were also identified as a contributor to the resource limitations that contributed to the delays. As well, the ministry identified the introduction of new case management software as having a temporary impact.

Our investigation confirmed that both overall ministry caseload and the volume of reconsideration requests increased significantly at a time that coincided with a drop in compliance with legislated timelines. A significant cut in resources allocated to reviewing reconsideration requests occurred at the same time. The ministry also concurrently made a number of changes to the administration and structure of the reconsideration program. Most critically, we learned that the decision to introduce these changes and to cut resources assigned to conducting reconsiderations was made when the ministry was already experiencing an increase in overall caseload and anticipating further increases. These temporary factors contributed to a significant drop in compliance between 2009 and 2012.

Our investigation also identified a number of factors that contribute to reconsideration delay on an ongoing basis. These factors include errors in transferring reconsideration requests, the use of extensions, Person with Disabilities adjudication outcomes, and the ministry's limited tracking of the volume of reconsideration requests. These factors present an opportunity for the ministry to make improvements in its process to ensure a higher and more consistent rate of compliance that will result in improved support for ministry clients.

These factors are discussed in more detail in the sections that follow, beginning with the factors that emerged in 2009.

TEMPORARY FACTORS IN RECONSIDERATION DELAY

We identified three significant temporary factors that negatively impacted the ministry's ability to meet required timelines for reconsideration beginning in 2009. Increased caseload was one of these factors, but the ministry had anticipated increased caseloads well in advance of any impact on reconsideration timeline compliance. The introduction of new case management software also had a brief impact, but did not occur until well after the initial drop in compliance reported in June and July of 2009. The most significant contributing factor that emerged from our investigation was the ministry's implementation of its plan to centralize reconsideration decision-making – specifically its decisions around staffing and training at a time when caseloads were increasing and major systems changes were planned.

Caseload increases

The number of reconsideration decisions being processed by the ministry increased substantially in 2009 in conjunction with an increase in the number of people in BC who applied for and were receiving financial assistance from the ministry. The following table illustrates the changes in the ministry's income assistance and disability assistance caseloads for each calendar year from 2006 to 2012.[20]

Table 2: Changes in ministry client caseload (as of fiscal year end)

	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Income Assistance	38,272	40,034	50,537	60,749	60,428	53,751	50,443
% change		+4.6%	+26.2%	+20.2%	-0.5%	-11.0%	-6.2%
Disability Assistance	61,325	65,852	69,737	73,094	77,876	82,314	85,753
% change		+7.4%	+5.9%	+4.8%	+6.5%	+5.7%	+4.2%
Total Caseload	99,597	105,886	120,274	133,843	138,304	136,065	136,196
% change		+6.3%	+13.6%	+11.3%	+3.3%	-1.6%	+0.1

Table 2 demonstrates that there was a substantial increase in the number of income assistance clients over the 2008/09 and 2009/10 fiscal years. The number of disability assistance clients has increased at a relatively consistent rate (varying from 4.2% to 7.4%) in each fiscal year over the period of time reviewed. Increases in overall caseloads impact the number of reconsideration requests the ministry receives for reasons that are transparent: more people on assistance means more decisions about eligibility, and a proportionally higher number of decisions to deny, discontinue, or reduce assistance. This inevitably leads to more requests to have those decisions reconsidered.

We were interested in the extent to which changes in reconsideration volume corresponded to the changes in overall ministry caseload. The table that follows summarizes the total number of reconsideration decisions made by the ministry in each fiscal year from 2006/07 to 2012/13 (up to September 2012).

[20] Ministry of Social Development and Social Innovation website, British Columbia Employment and Assistance Cases by Program – 2006-present. http://www.hsd.gov.bc.ca/research/index.htm.

The most significant contributing factor that emerged from our investigation was the ministry's implementation of its plan to centralize reconsideration decision-making – specifically its decisions around staffing and training at a time when caseloads were increasing and major systems changes were planned.

TEMPORARY FACTORS IN RECONSIDERATION DELAY

Table 3: Number of reconsideration decisions per fiscal year

	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Total Reconsideration Decisions	3,062	3,020	3,095	5,019	5,242	4,807	4,069
% change/yr.		-1.37%	+2.48%	+62.16%	+4.44%	-8.30%	-15.35%

What emerges most clearly from these numbers is a clear contrast between the respective patterns of changes in overall caseload and reconsideration volume. While overall caseload showed significant increases totalling 34.4% over a three year period from 2007/08 to 2009/10, the number of reconsideration decisions by the ministry remained relatively stable until 2009/10 when a sharp 62.2% increase in the total number of reconsideration decisions occurred. Further, over the last two fiscal years the number of reconsideration decisions has declined significantly while overall caseload has remained relatively stable.

It is useful to consider the extent to which the increase in reconsideration volume in 2009/10 might have been anticipated by the ministry so that steps could be taken to prevent or reduce the drop in compliance with time limits. It may be initially unclear how a more gradual caseload increase followed by a period of stability might influence a sharp increase in reconsideration volume followed by a notable decline, or why the increase in reconsideration volume was proportionally much higher. There are, however, a number of factors that suggest that these patterns reflect a relationship that is neither surprising nor unpredictable.

While the overall increase was more gradual, table 2 shows that the most significant increase in caseload was the 26.2% increase in income assistance cases in 2008/09. This indicates that during that year a much larger percentage of the ministry's caseload consisted of new clients than in previous years.

The statistics on overall caseloads do not take into account the number of new applications for assistance that were denied during the same period. These initial decisions to deny assistance are also subject to reconsideration and could be reasonably expected to increase in conjunction with increases in overall caseload. New clients are also more likely to be applying for designations, exemptions and ongoing supplements for the first time, which would result in a direct increase in the number of denials of those requests.

Further, increases in the number of eligibility decisions without corresponding staffing increases unavoidably allow less time for ministry staff to not only consider those applications but also to communicate the reasons for eligibility decisions to clients. This could also have been anticipated to result in a greater number of requests to have decisions reconsidered. These factors indicate that the increase in overall caseload and particularly new clients was likely to result in an increase in the volume of reconsiderations that exceeded the increase in overall caseload.

These factors also explain why the volume of reconsiderations would be likely to decrease once the overall caseload stabilized. While the total caseload has not decreased, with a more stable caseload the number of new ministry clients will have decreased since 2009. For the same reasons that an increase in new clients could be expected to cause an increase in reconsideration volume independent of the total caseload, a subsequent decrease in new clients would result in a decline in reconsiderations. This is reflected in the volume of reconsiderations in the most recent fiscal year, which remains significantly higher than it was before the increase in caseload began five years earlier, but is lower than in 2008/09 when the number of new clients peaked.

There is a relationship between the volume of reconsideration requests and compliance with legislated time limits. When we look at reconsideration volume by fiscal year there appears to be direct correspondence between the 62.2% increase in volume in 2009/10 and the drop in compliance to 29.5% from 92.7% the previous year. However, when we consider the numbers from month to month, it appears clear that while a relationship exists, the increase in volume alone may not provide a complete explanation.

The following charts compare reconsideration volume to the percentage of files where the ministry did not comply with time limits for the 2008/09 and 2009/10 fiscal years.

Figure 1: Reconsideration volume by month

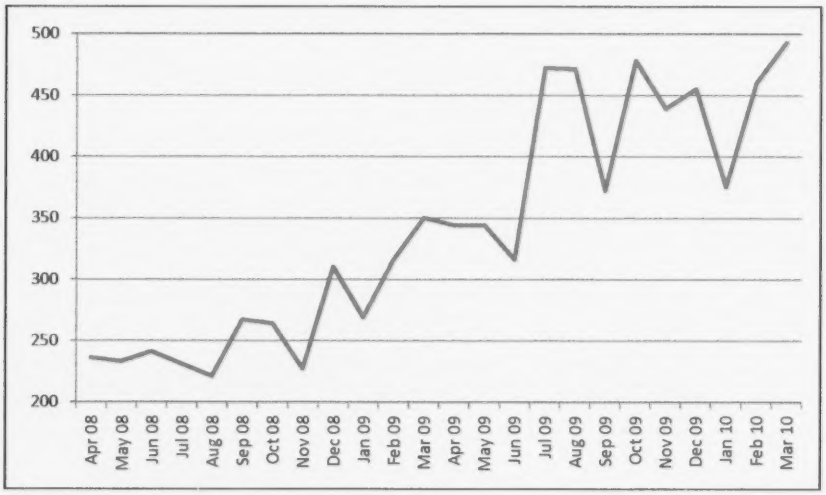
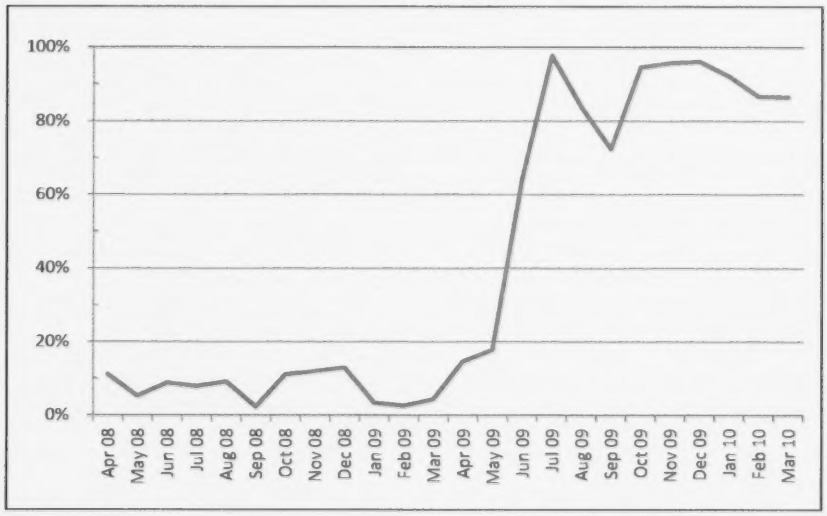


Figure 2: Percent of reconsideration decisions made beyond legislated timelines by month



While there may appear to be some direct correspondences between these two patterns, a closer analysis indicates that the relationship is more complex.

In terms of correspondence, the drop in compliance which was reported in July 2009 corresponds directly to the highest monthly increase in volume. Similarly, there is an improvement in compliance in September 2009 that appears to correspond to a decrease in volume at the same time, with both trends reversing themselves in the following month.

Closer consideration, however, suggests that these similarities do not form a strong basis to conclude that the increase in reconsideration volume directly caused the drop in compliance that occurred. Reconsideration volume began a significant increase at the end of 2008, but compliance remained relatively stable until May 2009, suggesting that increased volume did not have an immediate impact on compliance. The ministry's statistics relate only to the date reconsideration decisions are made, not the date they were requested. A number of decisions made in July 2009 were actually due under the legislation in June 2009 or earlier. The spikes in both charts in that month were therefore also influenced by the ministry taking steps to address an increasing backlog of late reconsiderations. This would also be consistent with the brief improvement in compliance that followed along with a reduction in the volume of decisions in September 2009. As a result, it appears that while volume may have influenced compliance, non-compliance also influenced the number of reconsiderations reported in each month.

An increased caseload, along with a related increase in reconsideration requests, influenced the ministry's ability to comply with time limits but did not independently cause the delay that occurred. Our investigation looked at what actions the ministry took around 2009 that influenced its ability to make timely reconsideration decisions.

Centralization of reconsideration decision-making

The increase in complaints to our office coincided with the beginning of the centralization process on March 30, 2009.

Prior to March 30, 2009, reconsiderations were processed in each of the ministry's five regions and at the central Health Reconsideration Branch. Seven reconsideration officers at the Health Reconsideration Branch processed reconsiderations of the following decisions:

- new Persons with Disabilities designation applications
- new Persons with Persistent Multiple Barriers to Employment applications
- health supplements over $500

In the regions, nine regional reconsideration adjudicators worked half-time processing all other reconsiderations. The remainder of their time was spent on other duties.

In March 2009, the ministry centralized all reconsideration decision-making under a new Reconsideration Branch in Victoria. One of the ministry's stated objectives in centralizing the reconsideration process was to complete reconsiderations within the legislated time limits using fewer resources. The ministry identified increasing caseloads and budget constraints as the impetus for the decision to centralize the reconsideration process. As part of the centralization process, reconsideration officers at the previous Health Reconsideration Branch who had dealt exclusively with health-related reconsiderations were tasked with adjudicating all types of ministry decisions. The regional reconsideration adjudicators were reassigned to other responsibilities.

The ministry explained that it expected centralization to improve the efficiency of decision making in the longer term through standardized reconsideration processes, staff training, work force management and monitoring practices.

When centralization began during April and May 2009, 93.9% of reconsideration decisions were completed within legislated time limits. The ministry did not achieve that level of compliance again until February 2013. The increase in complaints to our office coincided with the beginning of the centralization process on March 30, 2009. The major increase in delay was reflected in statistics for July 2009, just

after centralization was complete. The centralization process had an impact on reconsideration decision-making. As a result, we looked at the steps the ministry took in planning and implementing the centralization process, as well as how the ministry followed up on that process in resourcing the newly formed Reconsideration Branch.

Planning

The February 2009 ministry briefing note that formed the basis for the ministry decision to centralize reconsiderations reflects some interesting assumptions that the ministry appears to have relied on in deciding to centralize reconsiderations and in planning for the centralization process. This briefing note also highlights a need for safeguards to minimize the risk that centralization might negatively impact the ministry's ability to meet legislated time limits.

First, the ministry minimized the need for training of reconsideration officers to prepare for their expanded responsibilities. Prior to centralization, reconsideration officers were responsible for reconsiderations of the PWD designation, PPMB eligibility, and health supplements over $500. Regional reconsideration adjudicators were responsible for an additional 68 different categories of ministry reconsideration along with health supplements under $500. The ministry's briefing note states the following with regard to the need for training:

> *It would require an initial investment in training. However, as ROs[21] are well versed in interpreting and applying legislation, the training would likely be minimal.*

The ministry's assumption that only minimal training was necessary was unreasonably optimistic.

The ministry's assumption that only minimal training was necessary was unreasonably optimistic. While some of the staff of the new Reconsideration Branch would have previous experience applying the legislation specific to PWD and PPMB designations as well as health supplements, that experience does not necessarily translate to expertise in applying other legislation which encompasses the 68 different categories of assistance that were being added to their responsibilities. Reconsideration officers' general experience in legislative interpretation does not negate the need for training in new subject matter. Many of the decisions that were previously reconsidered by regional adjudicators require the application of often complex criteria and subject matter that were not part of the decisions that were previously reviewed by Health Reconsideration Branch. For example, the decisions previously reviewed in the regions involved such issues as determining income and asset levels, applying earnings exemptions, assessing trusts, evaluating interests in property, determining whether individuals are in a marriage-like or dependency relationship, reviewing the validity of overpayment assessments, and many other complex areas related to financial eligibility for assistance. These are often complex issues that may involve federal programs and legislation, common law principles, or accounting. The regional staff who were previously responsible for reviewing these decisions had significant experience with this subject matter.

Second, the ministry minimized the need for additional staff that would arise from the centralization process. The February 2009 briefing note stated that, from April to December 2008, seven staff at Health Reconsideration Branch conducted 1,097 decisions, while the nine regional reconsideration adjudicators conducted 1,132 decisions (with only half of their time allocated to completing reconsiderations). The briefing note also confirmed that the ministry was aware at the time that their caseload was increasing, and projected a 17.6% increase in the overall caseload over the 2009/10 fiscal year – significantly higher than the 11.3% increase which actually

[21] Reconsideration Officers

occurred. The ministry estimated that centralization would double the number of decisions conducted by reconsideration officers. Based on these projections, however, the decision note states that only two additional reconsideration officers would be required for fiscal 2009/10. This constitutes an overall reduction in staff assigned to conducting reconsiderations after centralization.

The assertion that two additional staff would suffice is not even supported by the data provided in the decision note at the time. The projection that the number of decisions conducted by reconsideration officers would only double is contradicted by the data on which it was based. First, the note indicates that the number of decisions conducted in the regions was greater than the number conducted at the Health Reconsideration Branch. This means that centralization would more than double the number of decisions conducted by reconsideration officers unless overall reconsideration request volume decreased. However, the ministry did not predict a decrease. The briefing note projected a 17.6% increase in caseload over the following fiscal year and stated that the number of reconsideration requests would rise proportionally. The data in the briefing note thus leads to a projection that in 2009/10 reconsideration officers would be making significantly more than double the number of decisions they were required to make in 2008/09. Further, as discussed earlier, the ministry could have anticipated that the increase in new clients that results from an increase in overall caseload would have had a more significant initial impact on reconsideration request volume. It is difficult to understand how work that previously required the equivalent of 4.5 full time positions could be added to the existing responsibilities of the branch with the addition of only two new staff without anticipating a significant negative impact on performance, given the anticipated caseload increase.

No training was developed or provided to prepare Reconsideration Officers for the greatly expanded range of decisions they became responsible for reviewing following centralization.

Training

We reviewed what training the ministry provided to Reconsideration Branch staff in 2009 as part of the centralization process. The only training that was provided to Reconsideration Branch staff in 2009 was general training in discretionary decision-making and administrative fairness, along with the ministry's general reconsideration and appeal training. Both of these training modules have been used since 2007, with only minor updates occurring in 2009. While this training is important for reconsideration decision-makers in general, it had no specific connection to the new types of decisions that would have to be made by different staff as a result of the centralization process. There was no written training plans prepared as part of the centralization process. No training was developed or provided to prepare Reconsideration Officers for the greatly expanded range of decisions they became responsible for reviewing following centralization.

Staffing

Looking at how centralization actually unfolded, it is clear that the ministry did not adequately resource the Reconsideration Branch for the transition. The total number of reconsiderations completed from April to December 2009 was 3,691 – more than triple the number completed by the Health Reconsideration Branch in the same period of the previous year.

Based solely on the data available in February 2009, the ministry could reasonably have anticipated that the increase in overall caseload would have had a much greater impact on reconsideration volume due to the number of new clients. In addition the ministry identified specific increases in both caseload and reconsideration volume in the months leading up to centralization. The ministry's awareness of its caseload increases is apparent from their publicly available monthly reporting. Consistent with the information in the ministry's February 2009

briefing note, these reports show that the ministry observed sharp increases in caseload from November 2008 through February 2009 at an average rate of 2,437 clients per month.[22] The ministry's decisions around staffing both before and after centralization can only have been made in full awareness of ongoing and anticipated increases in caseload and reconsideration volume.

The ministry provided the Reconsideration Branch with the two new staff suggested in the decision note. These staff started work in May and June 2009. The ministry's compliance with legislated time limits plummeted around the same time, while the volume of reconsiderations continued to increase. However, the ministry did not allocate any additional staff to the newly formed branch until September 2009, when the equivalent of 1.3 additional full time staff were allocated to the branch. Between September 2009 and September 2012, staffing levels at the reconsideration branch from month to month varied significantly. The ministry's resourcing of the branch was also affected by the announcement of a government-wide hiring freeze in September 2012.

The ministry has now demonstrated the ability to achieve a rate of compliance that is consistent with levels prior to centralization. It should be noted that, four years after centralization occurred, this rate of compliance has been achieved with more staff allocated to reconsideration decision-making than were allocated in the plan for centralization, and in conjunction with a significant reduction in the volume of reconsideration requests from 2009 levels.

Case management system changes

The ministry told us that the introduction of a new Integrated Case Management (ICM) system in November 2010 and staff training for the new system had a temporary negative effect on staff workloads.

Following the initial implementation of the ICM system, reconsideration officers were required to enter basic reconsideration data, including reconsideration decisions, into both ICM and the previous Reconsideration and Appeal System (RAS). The ministry indicated this duplication was required in order to maintain statistical reporting until reporting capability in ICM was developed. Duplication of entry into both systems continued through the commencement of Phase 2 of the ICM project until February 15, 2013, when use of the RAS system was discontinued.

The data provided by the ministry does show a decline in compliance with legislated time limits in the months just following the Phase 1 and 2 implementation dates of November 2010 and April 2012. Most notably, the implementation of Phase 1 coincides with a subsequent drop from 28.5% in November 2010, the highest rate of compliance since June 2009 to 1.91% in December 2010, the lowest rate of any month for which we obtained data.

The introduction of the new ICM system and the duplication of work resulting from the continued use of the RAS system has been identified as having an adverse effect on compliance with time limits that could have been mitigated with improved planning, training and resourcing.

The ministry's decisions around staffing both before and after centralization can only have been made in full awareness of ongoing and anticipated increases in caseload and reconsideration volume.

[22] Ministry of Social Development and Social Innovation website, British Columbia Employment and Assistance Cases by Program – March 2009: http://www.hsd.gov.bc.ca/research/index.htm.

Conclusion

The drop in the ministry's compliance with mandatory timelines for reconsideration which occurred in 2009 reflected the consequences of the ministry's decision to reduce both the number and expertise of reconsideration staff at a time when demands on those staff were predictably increasing.

The ministry's decision to centralize reconsiderations was not based on realistic planning or statistical projections. The plan for centralization relied upon optimistic assumptions about the volume of work and the ability of staff to adapt to new responsibilities. The ministry provided no new training to reconsideration staff with respect to the additional subject matter falling under their responsibility. The ministry reduced the number of people working on reconsiderations at a time when an ongoing major increase in caseload was expected to continue. Realistic analysis could have allowed the ministry to anticipate that there was a likelihood that reconsideration volumes would increase. Systemic delay would seem a foreseeable result of this plan.

When centralization occurred and delay issues subsequently arose, the ministry did not act in a timely way to reassess its plan and address the issues, meet its legal obligations and reduce the negative effects on its clients.[23]

With the passage of time, additional resources, and reduced volume, the ministry has slowly begun to recover from the impacts of the centralization process and has in 2013 returned to compliance levels above 90%.

With the passage of time, additional resources, and reduced volume, the ministry has slowly begun to recover from the impacts of the centralization process and has in 2013 returned to compliance levels above 90%. This appears to demonstrate that with appropriate resources a centralized decision-making process can fulfil the ministry's goal of improved efficiency while remaining both timely and fair. It is up to the ministry to ensure that it continues to take realistic steps to achieve that goal on a consistent basis over the long term.

It also provides an example for the future. The ministry needs to take the necessary steps in planning and implementing changes to its programs to ensure that it is able to continue to fulfil its responsibilities to its clients.

[23] The ministry made 11,175 reconsideration decisions beyond the time limits required in the Regulations between April 2009 and March 2013.

ONGOING FACTORS IN RECONSIDERATION DELAY

Reconsideration transfer errors

In the course of our file review, we identified that some requests for reconsideration were not immediately forwarded from the local Employment and Assistance Office to the Reconsideration Branch, resulting in delay in the decision-making process.

In one case an individual submitted a completed reconsideration request to an Employment and Assistance Office on February 22, 2011. The reconsideration request was not received by the Reconsideration Branch until March 10, 2011, which was two days beyond the 10 business day time limit for making a decision. In another case, the completed reconsideration request was submitted to a ministry Employment and Assistance Office on February 23, 2011, and was not received by the Reconsideration Branch until March 10, 2011. In both cases, the Reconsideration Branch did not receive the request for reconsideration until after the 10 business day time limit for a decision had elapsed.

The ministry explained that the new ICM system was implemented in November 2010 and initially there was some confusion in the local Employment and Assistance offices about when and how to use the old and new electronic systems. This led to errors in file transfers. If a file was not properly transferred, the Reconsideration Branch would not receive notification that a request for reconsideration had been submitted and was awaiting a decision.

Steps were taken to address delays caused by errors in transferring files following the introduction of the ICM. The Reconsideration Branch began checking all service requests listed on the electronic systems daily to identify and take action on outstanding requests. The ministry also instituted a process for tracking reconsideration requests which were not properly transferred to the Reconsideration Branch. Still, in July 2011 alone at least six reconsideration decisions were not made within the legislated time limits because the Reconsideration Branch was not aware of the reconsideration requests due to transfer errors.

With the introduction of Phase 2 of the ICM project in April 2012, the ministry adopted new guidelines for staff completing reconsideration requests, including ICM instructions and Standard Operating Procedure documents. The ministry's Standard Operating Procedures and its training for field staff on how to process reconsideration requests through the ICM system have since been updated.

In 2012/13 there were 41 reconsideration decisions that were completed past the legislative time limit due to staff errors in transferring the reconsideration request to the Reconsideration Branch.

Based on the ministry's weekly compliance reports between March 24 and July 6, 2013, we determined that, with the ministry's improvement to a 96.43% average level of compliance, transfer errors are now the primary cause of reconsideration delay beyond time limits. During this period transfer errors accounted for 65.2% of late reconsiderations during that period. Transfer errors resulted in some delays of a month or more, including one request which was not transferred to the reconsideration branch until 100 days after the day it was submitted to the local office.

The ministry has made efforts to reduce transfer errors, but they are not only still occurring, but are now the leading cause of reconsideration decisions being made beyond the legislated time limits.

Based on the ministry's weekly compliance reports between March 24 and July 6, 2013, we determined that, with the ministry's improvement to a 96.43% average level of compliance, transfer errors are now the primary cause of reconsideration delay beyond time limits.

Ministry tracking of reconsideration volume and compliance

To demonstrate accountability, public agencies need to regularly monitor their compliance with the legislative framework under which they operate. Monitoring allows agencies to ensure that they are operating in a fair and consistent manner and allows for targeted action to address any issues that may arise. Given the extent of the delays experienced by the reconsideration branch, when we commenced our investigation in 2011 we asked the ministry about how it was internally tracking its performance in this area. The ministry informed us that it tracked statistics on reconsideration decisions, including volume and compliance with timeline, in monthly and quarterly reports.

More recently, in 2012 the ministry advised us that they had begun using weekly compliance reports internally. These reports should improve the ministry's ability to monitor volume and compliance rates and to respond to changes in a more timely and effective fashion.

During our investigation the ministry advised us that it was not able to provide us with statistics on the number of reconsideration requests received by month, because it did not have the means to track the receipt of reconsideration requests. They explained that because reconsideration requests are regularly submitted in error and subsequently voided from the ministry's systems, and because they are unable to account for voided requests, the ministry cannot establish accurate statistics regarding reconsideration requests received. As a result, all ministry statistics relating to reconsiderations are based on the decision completion date.

This limitation in tracking of requests also hinders the ministry's ability to identify and respond to delay issues when they occur, as well as its ability to identify any seasonal or other recurring patterns in the volume of requests.

This limitation presented some difficulty for our office in attempting to accurately assess the timing of changes in reconsideration volume and compliance with time limits. In particular, we were not able to determine conclusively when the major drop in compliance that affected decisions made in June and July 2009 actually began to occur.

This limitation in tracking of requests also hinders the ministry's ability to identify and respond to delay issues when they occur, as well as its ability to identify any seasonal or other recurring patterns in the volume of requests.

Reliance on the reconsideration decision date to monitor compliance can also result in a high level of compliance being reported at a time when in fact the ministry may already have exceeded time limits on any number of outstanding reconsideration requests. As a result the ministry may not identify delay until several weeks or months after the problem has begun to emerge.

As delay is not reported until the late reconsiderations are completed this also means failure to meet legislated time limits in making reconsideration decisions actually worsens the reliability of the ministry's tracking of reconsideration volume. In effect, the more behind the ministry is in completing reconsiderations, the less able they are to identify the problem and plan an appropriate response. Any analysis of changes in volume from month to month – and any resulting planning to reallocate resources to ensure that the capacity to ensure timely decision-making is in place when volume changes occur – is inherently flawed.

Finding & Recommendation

F1 The Ministry of Social Development and Social Innovation does not track reconsiderations by date of request which limits its ability to effectively plan and apply resources to address changes in volume.

R1 The Ministry of Social Development and Social Innovation take the necessary steps to ensure that its systems are able to accurately track reconsideration requests and compliance with time limits based on the date of submission.

Persons with Disabilities (PWD) adjudication

In 2009/10, the ministry reported that 38% of all reconsideration requests were approved at reconsideration. In 2010/11 43% of all reconsiderations were approved. Given that clients who are ultimately approved at reconsideration are most affected by delay, we looked at how ministry clients were impacted by this increase in approval rates. One question we examined was whether there were certain client groups more negatively affected than others by delays in completing reconsideration decisions and, if that was the case, to identify these groups as well as the impacts of delays on them. Our file review and the ministry's reported statistics indicated that the percentage of new PWD applications approved on reconsideration was significantly higher than the average approval rate for all other reconsiderations.

A new PWD application is one in which a person applies to be designated as a PWD. A PWD designation entitles the person to receive disability assistance, among other benefits.

A single employable person on income assistance receives a maximum of $610 per month. A single person receiving disability assistance receives $906.42 each month. This difference of almost $300 per month is significant for a person who is otherwise attempting to manage on $610 per month.

In addition to the higher rates of support provided under disability assistance over income assistance, PWD clients are also eligible for health supplements, are exempted from employment obligations, and enjoy higher exemptions for employment earnings and assets.

Volume of PWD reconsiderations

The table below sets out the number of PWD reconsideration decisions from 2006/07 to 2010/11 as well as the percentage of PWD reconsiderations relative to all reconsideration decisions for that period.

Table 4: Number of PWD reconsideration decisions

Fiscal Year	Reconsiderations involving PWD designation	PWD as a percentage of all reconsideration decisions
2006/07	1,107	36%
2007/08	1,022	34%
2008/09	1,015	32%
2009/10	2,046	41%
2010/11	2,134	41%
2011/12	1,714	36%
2012/13	1,282	33%

This table demonstrates that PWD reconsideration decisions comprise a high percentage of all reconsideration decisions. The number of reconsiderations involving PWD designation more than doubled from 2008/09 to 2009/10, but over the last two years appears to have declined. However, the overall high percentage of PWD-related reconsiderations has remained relatively consistent, averaging 38% since April 2006.

Assessing PWD eligibility is a complex process, as it involves reviewing and analyzing a lengthy application that includes multiple assessment criteria as well as medical and functional information about the applicant. The high percentage of PWD reconsiderations relative to the total number of non-PWD reconsiderations is significant in light of the additional time that staff typically need to adjudicate PWD reconsiderations.

Higher rate of PWD reconsideration approvals

The following tables show approval rates for PWD and non-PWD reconsiderations.

Table 5: PWD reconsiderations approved

Fiscal Year	Total PWD Reconsiderations	Approved	% of Total
2008/09	1,015	620	61.1%
2009/10	2,046	1356	66.3%
2010/11	2,134	1538	72.1%
2011/12	1,714	1210	70.6%
2012/13	1282	913	71.2%

Table 6: Non-PWD reconsiderations approved

Fiscal Year	Total Non-PWD Reconsiderations	Approved	% of Total
2008/09	2,148	529	24.6%
2009/10	2,973	541	18.2%
2010/11	3,108	715	23.0%
2011/12	3,093	880	28.5%
2012/13	2,645	827	31.3%

These tables demonstrate that the approval rate for PWD reconsiderations is significantly higher than other types of reconsiderations. Since April 2008, the PWD reconsideration approval rate has invariably been more than double that of non-PWD reconsiderations.

These tables demonstrate that the approval rate for PWD reconsiderations is significantly higher than other types of reconsiderations. Since April 2008, the PWD reconsideration approval rate has invariably been more than double that of non-PWD reconsiderations.

The reconsideration process allows for the examination of additional information and medical evidence in support of a person's new PWD application. According to the ministry, reconsideration officers sometimes delay reconsideration decisions beyond legislative time limits in order to seek clarification of medical information from applicants or medical professionals. If this information was obtained during the initial application process – whether in the original application or at the ministry's request during the review – it is reasonable to expect that the ministry would have a much greater likelihood of making the correct decision at the outset, thus decreasing the number of reconsideration requests while providing more timely assistance to clients. Given the high percentage of new PWD applications approved on reconsideration, we looked at whether the ministry has taken reasonable steps to ensure that the PWD application and adjudication processes are accessible, thorough, and fair.

The PWD application form is a 24 page document with three sections. The applicant completes the first section; a physician completes the second section; and an assessor, who must be from a group of prescribed professionals, completes the third section. In addition to the application itself, medical or other documentation may be required to support the application.

Owing to the complexity of the application process and the forms involved, it is critical that the ministry ensure that both applicants and the professionals completing PWD applications for them are provided with sufficient information regarding PWD eligibility criteria and application procedures, so that PWD applications are more likely to be complete and comprehensive at the initial stage. This reduces the likelihood of requiring reconsideration of the decision.

The ministry's approach has been to provide copies of the PWD adjudication manual to the advocacy community. This assists people who are receiving help from an advocate with their initial PWD application, but the level of impact on individuals who are applying for a new PWD designation is limited, given that not everyone has access to or chooses to seek help from an advocate.

It is also important to take into account that PWD applications which are approved at reconsideration only reflect those applicants who are willing and able to request a review. Given the challenges ministry clients face in seeking and accessing services, applicants may simply give up on their PWD application after the first denial, even though they may be granted the designation on reconsideration.

The PWD adjudication process negatively impacts ministry clients accessing the reconsideration process in two ways. First, potentially eligible ministry clients may lose out on the additional benefits provided by the PWD designation – whether temporarily until eventual approval at reconsideration, or permanently should they choose not to seek a review or reapply. Second, all ministry clients are potentially impacted due to the effects that high volumes of reconsideration requests can have on the ministry's ability to complete reconsiderations within legislated timelines.

Improvements to the PWD application process could result in a decreased need for reconsideration. This would reduce the likelihood of negative impacts of delay on ministry clients seeking reconsideration overall, result in more timely decisions on PWD designations, and help to ensure that persons whose medical conditions merit the increased financial assistance and special programs available to PWD clients have appropriate and timely access to those crucial government services. This would assist some of the province's most vulnerable citizens.

Finding & Recommendation

F2 A disproportionately high percentage of decisions to deny Persons with Disabilities (PWD) applications are overturned at reconsideration.

R2 The Ministry of Social Development and Social Innovation review its Persons with Disabilities (PWD) application process and make the necessary changes to improve the accuracy of decisions about PWD status made at the first level of decision making and track and report publicly the results of those changes.

Time limit extensions

In May 2008, a regulatory amendment was introduced allowing for an extension of the time for completion of reconsideration decisions. In the ministry's 2007/08 *Annual Service Plan Report* it explained that this amendment was introduced as it was not meeting its legislated time limits for completing reconsideration decisions, particularly on complex health-related decisions where additional medical evidence was often required. This amendment provides that the time allowed to make a reconsideration decision may be extended to 20 business days "if the minister considers it necessary in the circumstances and the person consents".[24] The 2007/08 *Annual Service Plan Report* stated that the extension provision would "allow clients the opportunity to provide additional information to support the request for reconsideration," and that the change was expected to "significantly improve performance on this measure in the future".[25]

By establishing a procedure to allow the extension of the legislated time limits by client consent, the ministry has recognized the importance of meeting expectations that those time limits be followed in the absence of that consent. That recognition, however, is not sufficient unless the procedure is consistently applied in appropriate circumstances and its use results in decisions being made within the extended time limit. Our investigation found that the ministry has not consistently applied the extension provisions to ensure that reconsideration decisions are completed within legislated time limits.

In the ministry's 2008/09 *Annual Service Plan Report* the extended time limit was reported as one of the factors that contributed to the ministry exceeding its 90% performance target to complete all reconsiderations within the legislated time limit.[26] This improvement in compliance was not, however, sustained in the long term. Our investigation looked at how the extension provisions were being applied and the effect their use was having on compliance.

In practice, most extensions are requested by the client, not the ministry. Clients may request extensions orally or in writing at any time before the reconsideration decision is made, and these requests are generally accommodated by the ministry.

Policy also states that the ministry may request extensions in order to seek clarification about information submitted in support of the reconsideration request. The ministry has, however, requested extensions only on rare occasions. In 2011 the ministry requested extensions only one or two times within the previous two years. In 2012/13, the ministry requested an extension nine times.

The ministry reported that in fiscal year 2009/10, extensions were granted on 669 reconsiderations, approximately 13% of the total number of reconsiderations completed during that period. In the 2010/11 fiscal year, an extension was given on 811 reconsideration requests, or approximately 15% of the total. In 2011/12, 820 reconsideration extensions were granted for 17% of the total. In 2012/13, extensions were granted on 814 of 4,069, or 20%, of completed reconsiderations. The numbers show a steady increase in the number of extensions, largely initiated by client requests.

[24] *Employment and Assistance Regulation*, B.C. Reg. 263/2002, s. 80(b); *Employment and Assistance for Persons with Disabilities Regulation*, B.C. Reg. 265/2002, s. 72(b).

[25] Ministry of Employment and Income Assistance, 2007/08 *Annual Service Plan Report*, p. 20.

[26] Ministry of Employment and Income Assistance, 2008/09 *Annual Service Plan Report*, p. 24.

In those cases where time limits are extended, the ministry has not demonstrated a consistent ability to meet the extended time limit. The ministry completed just 19% of reconsiderations within 20 business days where an extension had been granted in 2009/10, and only 7% in 2010/11. In 2011/12, 40% of extended timelines were met. From April to September 2012, 79% of extensions resulted in a decision before the expiry of the extended time limit. This improved further from October 2012 through March 2013, during which 90% of extended reconsiderations were completed in time.

The use of extensions can improve the ministry's overall compliance with time limits while affording clients additional opportunities to be heard. However, it appears that it is not being used consistently in situations where it could be of benefit. For example, our office investigated a complaint in 2012 in which it was decided at reconsideration that the ministry required legal advice and that additional documentation was needed from the client. The ministry did not request an extension. The reconsideration was completed 19 business days after it was requested and was decided in favour of the client. Had the ministry requested and obtained an extension, this reconsideration would have been in compliance with the extended 20 business day time limit.

Our review of weekly compliance reports between March 24 and July 6, 2013, indicated that nine reconsiderations were completed outside of time limits in order to clarify information. This suggests that the ministry still needs to improve its use of extensions.

EFFECTIVE DATES OF ELIGIBILITY

The ministry's governing legislation does not identify a specific consequence for the ministry when they complete reconsideration decisions outside of required time limits. However, the legislation does effectively impose specific financial consequences for late ministry reconsideration decisions on ministry clients whose reconsideration requests – or subsequent tribunal appeals – are approved. In most cases eligibility that results from a successful reconsideration or appeal is effective on the date of the reconsideration decision.[27] In the absence of any specific legislative authority to backdate eligibility, this means that when the ministry fails to comply with legally required time limits the effect can be a denial of assistance for the client.

An applicant designated as a Person with Disabilities (PWD) is eligible to begin receiving disability assistance on the first day of the month following the month in which the designation is made.[28] Similarly, a person determined to be a Persons with Persistent Multiple Barriers (PPMB) is eligible to receive a higher rate of income assistance on the first day of the month following the month in which the PPMB status is granted. Delaying approval of a PWD or PPMB designation can therefore have an adverse impact on a person's ability to meet their day to day needs, as they may lose a month or more of the increased financial assistance they would receive once they are designated PWD.

For example, a person who had been designated as PWD on April 15, 2011 would begin receiving disability assistance as of May 1, 2011. Similarly, a PWD designation made on May 1, 2011, would not be effective until June 1, 2011. If a person is approved for PWD at reconsideration or subsequently on appeal to the Employment and Assistance Appeal Tribunal, the effective date for receipt of disability assistance is the first day of the month after the reconsideration decision is made.

Our review of ministry reconsideration files included 65 PWD reconsiderations. We found that in 13% of these decisions delay in making the reconsideration decision resulted in a delay of the effective date of eligibility for disability assistance by a month or more. In other words, if these reconsideration decisions had been made within the legislated time limit, these individuals would have received disability assistance at least one month earlier.

In addition, there are other types of decisions where reconsiderations completed past time limits can result in the denial of assistance that would otherwise have been issued. These include recurring monthly supplements that fund ongoing needs, such as funding for:

- guide animals
- nutritional supplements
- tube feeding
- infant health
- natal support
- drug and alcohol treatment

[27] *Employment and Assistance Regulation*, B.C. Reg. 263/2002, s. 26; *Employment and Assistance for Persons with Disabilities Regulation*, B.C. Reg. 265/2002, s. 23.

[28] *Employment and Assistance for Persons with Disabilities Regulation*, B.C. Reg. 265/2002, s.23(1)(a).

Reconsideration delay can also result in an effective denial when the decision being reconsidered relates to specific eligibility criteria used to determine the amount of monthly shelter and support allowance a family is eligible to receive – for example, reconsiderations concerning the number of eligible members of a family unit or the amount of compensable shelter costs. Delay in these reconsiderations can result in an increase in the basic monthly support for a family being delayed into subsequent months, with no mechanism for the increase to be made retroactive earlier than the reconsideration decision.

The ministry has taken some steps to minimize the financial impact of delays on people applying for PWD designation. When the reconsideration branch experiences delays, toward the end of each month staff review all outstanding PWD reconsideration requests to ensure that a decision is made in that month. The ministry said this is intended to ensure that a successful PWD applicant does not lose a month of disability assistance, even if a decision is not made within the legislated time limits, by completing late PWD reconsiderations before the new month begins.

While this practice may be helpful in reducing the number of clients who are adversely affected by delay and could be applied to PPMB decisions as well, it does not affect other types of decision where delay could result in an effective denial of assistance. It also is not able to prevent impacts for clients whose reconsideration requests are not forwarded to the branch in time. Most importantly, an end of month review provides no remedy to persons who do experience a delayed effective date of eligibility as a result of reconsideration delay.

Given that the ministry is required under legislation to complete reconsideration decisions within prescribed time periods, the ministry also has an obligation to address the direct impacts on clients that arise from its failure to follow its own governing legislation. The ministry does not currently have any express legislative authority to backdate late reconsideration decisions. This does not, however, prohibit the ministry from compensating those who experience measurable financial impacts due to the ministry's non-compliance with its legislative obligations. It also does not prevent the ministry from implementing a long-term solution to the challenge posed by its lack of express authority to backdate assistance.

Given that the ministry is required under legislation to complete reconsideration decisions within prescribed time periods, the ministry also has an obligation to address the direct impacts on clients that arise from its failure to follow its own governing legislation.

In this respect, the BC Supreme Court's 2013 judgment in the *Lee* case is useful. In that case a ministry client had requested reconsideration of a decision to deny her application for the PWD designation on November 30, 2010. That request was approved on January 21, 2011, well beyond the 10 business day due date of December 14, 2010. If the decision had been made in compliance with the time limit, the complainant would have become eligible for disability assistance on January 1, 2011, but as a result of the ministry's delay she was not eligible until a month later. The person sought judicial review of a decision by the Employment and Assistance Appeal Tribunal's finding that the ministry did not have authority to backdate its decision. While the Honourable Madam Justice Fisher agreed with the Tribunal's conclusion, she expressed concerns about the Minister's non-compliance and stated the following:

> *It is clear that the intention of this legislative scheme is to provide a quick and efficient review and appeal system. The time limits established in s. 72 of the Regulation are part of that process. However, the legislation is silent on the consequences of non-compliance and no discretion is given to the Minister to deem eligibility for PWD status on a date other than the actual date the designation was made. I can certainly appreciate the frustration of applicants caught in the middle of what they reasonably perceive to*

be a bureaucratic gap. While it may be fair to draw a connection between the eligibility date in s. 23(1) and the time limit in s. 72, this is really a gap that should be remedied by the Lieutenant Governor in Council or the Legislature.[29]

Our investigation has also concluded that delayed eligibility arising from reconsideration decisions made beyond legislated time limits reflects a bureaucratic gap that merits a legislative remedy.

Finding and Recommendations

F3 When delay in reconsideration approvals beyond legislated time limits results in a later effective date of eligibility, Ministry of Social Development and Social Innovation clients are unfairly denied assistance they should have received.

R3 The Ministry of Social Development and Social Innovation identify reconsideration approvals since June 2009 where delay beyond legislated time limits resulted in a later effective date of eligibility, and compensate the affected individuals for the amount of benefits they would have been entitled to if their request had been approved within time limits.

R4 The Ministry of Social Development and Social Innovation minimize the impacts of delayed reconsiderations on clients' assistance by taking the steps necessary to make the effective date of an approval at reconsideration or a subsequent appeal no later than the date the reconsideration is required to have been made under the Regulations.

[29] *Lee*, supra, para. 77

PUBLIC REPORTING

Public reporting on compliance with legislated requirements increases the transparency and accountability of public agencies. It informs the public about where problems may exist and about what is being done to address them.

Until the 2008/09 fiscal year the ministry reported publicly on its compliance with the legislated time limits as a performance measure in its *Annual Service Plan Reports*:

- In 2005/06, the ministry's target was to complete 87% of all reconsiderations within 10 business days. It successfully completed 69% of reconsiderations within the 10 day legislated time limit. The ministry reported that on average all reconsideration decisions were completed in 11 days during this period.[30]
- In 2006/07, the ministry's target was to complete 88% of all reconsiderations within 10 business days. It successfully completed 76% of reconsiderations within the 10 day legislated time limit. The ministry reported that on average all reconsideration decisions were completed in less than 10 business days during this period.[31]
- In 2007/08, the ministry's target was to complete 90% of all reconsiderations within 10 business days. It successfully completed 81% of reconsiderations within the 10 day legislated time limit. The ministry reported that on average all reconsideration decisions were completed in 8.3 days, noting that this was an improvement from the previous two reporting periods.[32]
- In 2008/09 (April 2008 to March 2009 – the period of time immediately before the drop in compliance), the ministry's target was to complete 90% of all reconsiderations within 10 business days. This target was exceeded, with 94.6% of all reconsiderations being completed within 10 business days.
- The ministry stated in the 2008/09 Report that it would report the percent of reconsideration decisions made within the legislated time limits as part of the performance measure for the ministry's service standards in the *2009/10 Annual Service Plan Report*.[33] This revised approach was also reflected in the ministry's *2009/10-2011/12 Service Plan Update*, which included "Fair and timely dispute resolution, reconsideration and appeal processes" as an objective to be measured under its new performance measure focusing on overall compliance with service standards.[34]

  The ministry did not report publicly on its compliance with reconsideration time limits in its *2009/10 Annual Service Plan Report*, either as an independent performance measure or integrated in a broader measure of compliance with Service Standards.

The 2009/10 Report stated that the planned Service Standards measure was not implemented "due to resource limitations on investment in new technology to track performance" and "difficulty setting standards in the past year's environment of rapidly increasing demand for services."[35] However, as the ministry already had established technology to track performance on reconsideration timelines and had established target compliance rates in its previous reports, this rationale does not appear to explain the absence of any public reporting on reconsideration timelines. Given that it had the technological means to report on reconsideration timelines and was doing so internally on an ongoing basis, we were interested in why the ministry chose to leave this information out of its public reports.

Public reporting on compliance with legislated requirements increases the transparency and accountability of public agencies. It informs the public about where problems may exist and about what is being done to address them.

[30] Ministry of Employment and Income Assistance, *2005/06 Annual Service Plan Report*, p. 34.

[31] Ministry of Employment and Income Assistance, *2006/07 Annual Service Plan Report*, pp. 23-24.

[32] Ministry of Employment and Income Assistance, *2007/08 Annual Service Plan Report*, pp. 19-20.

[33] Ministry of Housing and Social Development, *2008/09 Annual Service Plan Report*, p. 24

[34] Ministry of Housing and Social Development, *2009/10-2011/12 Service Plan Update*, p. 10-13.

[35] Ministry of Housing and Social Development, *2009/10 Annual Service Plan Report*, p. 14.

In 2009/10 and 2010/11, the compliance rate with the legislated time limits declined drastically to 29% and 16% respectively. We asked the ministry to explain further why it chose to cease reporting publicly on this important performance measure.

In response to our question, the ministry informed us it underwent a restructuring process, which saw it temporarily take on an expanded portfolio comprised of the housing policy branch, gaming policy and enforcement, and the liquor control and licensing branch.[36] According to the ministry, because of increased demands arising from the expanded portfolio it chose to cease reporting publicly on certain performance measures, including its compliance with the legislated time limits for completing reconsiderations.

It is unclear how the expanded portfolio affected the ministry's ability to report on its compliance with the legislated time limits or other performance measures, and how the ministry determined which performance measures it would cease reporting on. The ministry did not provide any information that would indicate that the expansion of its portfolio, which included separate budget allocations for the new programs, would have impacted the ministry's ability to comply with the reconsideration time limits or to report on that compliance. In fact, the ministry achieved its highest rate of compliance with the reconsideration time limits during 2008/09, the fiscal year in which the expansion actually took place.

The ministry has informed us that they would include performance measures for reconsideration decisions in future years. The ministry's 2012/13 – 2014/15 Service Plan, released in February 2012, included as its first performance measure the "Percent of reconsideration decisions that are made within time frames".

In the course of our investigation, we highlighted the lack of public reporting on compliance with reconsideration timelines with the ministry. We also pointed to the fact that in previous years the ministry had established targets of 90% or lower for a mandatory 100% legislated time limit. The ministry has informed us that they would include performance measures for reconsideration decisions in future years. The ministry's *2012/13 – 2014/15 Service Plan*, released in February 2012, included as its first performance measure the "Percent of reconsideration decisions that are made within time frames".[37] The targets established for 2012/13 through 2014/15 are 100% compliance.

The ministry's *2012/13 Annual Service Plan Report* reported a compliance rate of 88% for the 2012/13 fiscal year.[38] While the target of 100% was not met in 2012/13, public reporting is a positive step and has made it unnecessary in this case to make a formal recommendation that the Ministry report on its compliance with the timelines the Legislative Assembly has imposed.

[36] The Ministry expansion took effect on June 23, 2008. In October 2010 most of the programs added in 2008 were transferred to the Ministry of Public Safety and Solicitor General.

[37] Ministry of Social Development, *2012/13 – 2014/15 Service Plan*, February 2012, p. 11.

[38] Ministry of Social Development and Social Innovation, *2012/13 Annual Service Plan Report*, p. 19. It is unclear why this rate of 88% differs from the 86.6% compliance rate indicated by the statistics provided to our Office.

SUMMARY
OMBUDSPERSON FINDINGS AND RECOMMENDATIONS

F1 The Ministry of Social Development and Social Innovation does not track reconsiderations by date of request which limits its ability to effectively plan and apply resources to address changes in volume.

R1 The Ministry of Social Development and Social Innovation take the necessary steps to ensure that its systems are able to accurately track reconsideration requests and compliance with time limits based on the date of submission.

F2 A disproportionately high percentage of decisions to deny Persons with Disabilities (PWD) applications are overturned at reconsideration.

R2 The Ministry of Social Development and Social Innovation review its Persons with Disabilities (PWD) application process and make the necessary changes to improve the accuracy of decisions about PWD status made at the first level of decision making and track and report publicly the results of those changes.

F3 When delay in reconsideration approvals beyond legislated time limits results in a later effective date of eligibility, Ministry of Social Development and Social Innovation clients are unfairly denied assistance they should have received.

R3 The Ministry of Social Development and Social Innovation identify reconsideration approvals since June 2009 where delay beyond legislated time limits resulted in a later effective date of eligibility, and compensate the affected individuals for the amount of benefits they would have been entitled to if their request had been approved within time limits.

R4 The Ministry of Social Development and Social Innovation minimize the impacts of delayed reconsiderations on clients' assistance by taking the steps necessary to make the effective date of an approval at reconsideration or a subsequent appeal no later than the date the reconsideration is required to have been made under the Regulations.

BRITISH COLUMBIA
The Best Place on Earth

November 29, 2013

Kim S. Carter
Ombudsperson
Province of British Columbia
PO Box 9030 Stn Prov Govt
Victoria BC V8W 9A5

Dear Ms. Carter:

Thank you for the opportunity to review and respond to the findings and recommendations contained in your final report on delays in the Ministry of Social Development and Social Innovation's reconsideration process.

The ministry is committed to providing the best system of support possible for British Columbians most in need. To accomplish this, the ministry recognizes that continuous process improvement is necessary to ensure the effectiveness and timeliness of the income and disability assistance programs and our decision-making processes. The ministry, therefore, values the significant efforts put forward by the Ombudsperson in proposing recommendations that are focused on ensuring the timeliness of the ministry's reconsideration process and minimizing the impact of reconsideration delays in the future.

Having duly considered your recommendations, the ministry accepts all of the recommendations in the final report.

The ministry would like to provide some additional information with regard to the report's finding that the percentage of denied applications for Persons with Disabilities (PWD) designation, which are approved at reconsideration is "disproportionately high." A reconsideration decision is a new decision of the Minister, and the client is given an opportunity to submit new evidence to the ministry before that decision is made. Those seeking the PWD designation include more new evidence than in any other reconsideration request. Often a substantial amount of new information is submitted and it is usually medical information. All of the new information is considered in making the reconsideration decision. Because of this newly-submitted evidence, a significantly high percentage of applications for the PWD designation that are denied at the original decision stage, are approved at reconsideration.

Ministry of Social Development and Social Innovation
Office of the Deputy Minister
Mailing Address: PO Box 9934 Stn Prov Govt Victoria BC V8W 9R2
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Kim Carter

The ministry recognizes the importance and value of seeking continuous process improvement in decision-making with respect to PWD designations. The ministry looks forward to the positive impact that the implementation of your recommendations will have on that area, on the continued timeliness of the reconsideration process, and on clients who were adversely impacted by reconsideration delays.

On behalf of the ministry, I firmly believe that your efforts to identify opportunities for improvement, together with the ministry's own efforts, will help ensure that assistance is provided to British Columbians most in need when they need it.

Sincerely,

Sheila Taylor
Deputy Minister

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 627 *, Approved and Ordered* December 12, 2013

Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the Employment and Assistance Regulation, B.C. Reg. 263/2002, and the Employment and Assistance for Persons with Disabilities Regulation, B.C. Reg. 265/2002, are amended as set out in the attached Schedule.

Minister of Social Development and Social Innovation

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Employment and Assistance Act*, S.B.C. 2002, c. 40, s. 35; *Employment and Assistance for Persons with Disabilities Act*, S.B.C. 2002, c. 41, s. 26

Other: OICs 873/2002; 874/2002

December 6, 2013 R/748/2013/27

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SCHEDULE

1 ***Section 26 of the Employment and Assistance Regulation, B.C. Reg. 263/2002, is amended***

(a) in subsection (1) by striking out "subsection (2), (2.1)" ***and substituting*** "subsection (2), (2.01), (2.1), (3.01)",

(b) by repealing subsection (2.1) and substituting the following:

(2.01) If the minister decides, on a request made under section 17 (1) *[reconsideration and appeal rights]* of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

(a) the date the minister makes the decision on the request made under section 17 (1) of the Act, and

(b) the applicable of the dates referred to in section 80 of this regulation.

(2.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (2.01). ,

(c) by adding the following subsection:

(3.01) If the minister decides, on a request made under section 17 (1) of the Act, that a person qualifies as a person who has persistent multiple barriers to employment, the person's family unit becomes eligible to receive income assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of

(a) the date the minister makes the decision on the request made under section 17 (1) of the Act, and

(b) the applicable of the dates referred to in section 80 of this regulation. , ***and***

(d) in subsection (3.1) by striking out "the date of the minister's decision on the applicant's request under section 17 (1) *[reconsideration and appeal rights]* of the Act in relation to the determination" ***and substituting*** "the month containing the earlier of the dates referred to in subsection (3.01)".

2 ***Section 23 of the Employment and Assistance for Persons with Disabilities Regulation, B.C. Reg. 265/2002, is amended***

(a) in subsection (1) by striking out "Subject to subsection (1.1)" ***and substituting*** "Except as provided in subsections (1.1), (3.11) and (3.2)",

(b) in subsection (2) by striking out "A family" ***and substituting*** "Subject to subsections (3.01) and (3.1), a family",

(c) by repealing subsection (3.1) and substituting the following:

(3.01) If the minister decides, on a request made under section 16 (1) *[reconsideration and appeal rights]* of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

(a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and

(b) the applicable of the dates referred to in section 72 of this regulation.

(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01).

(3.11) If the minister decides, on a request made under section 16 (1) of the Act, to designate a person as a person with disabilities, the person's family unit becomes eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of

(a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and

(b) the applicable of the dates referred to in section 72 of this regulation. , ***and***

(d) in subsection (3.2) by striking out "the date of the minister's decision on the applicant's request under section 16 (1) *[reconsideration and appeal rights]* of the Act in relation to the designation" ***and substituting*** "the month containing the earlier of the dates referred to in subsection (3.11)".

The Office of the
Ombudsperson
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